

**CONTRACT
BETWEEN
THE STATE OF LOUISIANA
DIVISION OF ADMINISTRATION, OFFICE OF TECHNOLOGY SERVICES (OTS)
AND
DELOITTE CONSULTING LLP**

On this 1st day of December 2015, ("Effective Date") the Division of Administration, Office of Technology Services, hereinafter sometimes referred to as the "State", on behalf of the Louisiana Department of Health and Hospitals, hereinafter sometimes referred to as "DHH" and Deloitte Consulting LLP, 701 Poydras Street, Suite 4200, New Orleans, Louisiana 70139, hereinafter sometimes referred to as the "Contractor", do hereby enter into a contract ("Contract") under the following terms and conditions.

1 SCOPE OF SERVICES

Contractor hereby agrees to furnish services to State as specified in Section 3.0.

In addition, State is licensing Deloitte Consulting's Laborwise ACA for 1095-B Reporting solution ("Laborwise ACA 1095-B") through a separate Subscription License Agreement that is attached hereto as Attachment XI (1095B Solution). Attachment XI shall exclusively govern the State's access to and use of the Laborwise ACA 1095-B solution and related support services described in the Subscription License Agreement and its schedules. Except as otherwise expressly set forth in Attachment XI, no other terms and conditions of the Contract shall apply to State's access to and use of the Laborwise ACA 1095-B solution and related support services.

1.1 DEFINITIONS

- 1.1.1 "ADABAS":** Adaptable Database System is Software AG's primary database management system.
- 1.1.2 "Affordable Care Act (ACA)":** The comprehensive health care reform law enacted in March 2010. The law was enacted in two parts: The Patient Protection and Affordable Care Act was signed into law on March 23, 2010 and was amended by the Health Care and Education Reconciliation Act on March 30, 2010. The name "Affordable Care Act" is used to refer to the final, amended version of the law.
- 1.1.3 "Applicant":** An individual who is requesting assistance from the agency.
- 1.1.4 "Application Lifecycle Management (ALM)":** The product lifecycle management (governance, development, and maintenance) of application software. It encompasses requirements management, software architecture, computer programming, software testing, software maintenance, change management, continuous integration, project management, and release management.
- 1.1.5 "Application Suite":** DHH Application Suite is designed to be a single access point for information related to the work of staff and through which new enterprise solutions will be delivered. It is a smart client application designed to host WinForm and Web solutions. It hosts a collection of applications within modules that are made available based on a role- and rule-based security system.
- 1.1.6 "BENDEX":** Beneficiary and Earnings Data Exchange: An automated data exchange system between the Social Security Administration (SSA) and certain state agencies that provides an accurate and economical means of timely informing the states about the SSA entitlement for Medicaid, Financial Assistance and SNAP recipients. This system serves as a data repository and inquiry system for Medicare information.
- 1.1.7 "Business Rules Engine (BRE)":** An externalized repository of business logic, often written in natural syntax, that can be pointed to by numerous software programs operating in the same common environment for programmatic decisions. Allows program logic to be updated by business users without the need for editing and troubleshooting software code.
- 1.1.8 "Centers for Medicare and Medicaid Services (CMS)":** Federal agency within the Department of Health and Human Services providing oversight of the Medicare and Medicaid programs nationally.
- 1.1.9 "Chief Information Officer (CIO)":** Senior executive providing leadership and insight regarding Information Technology.
- 1.1.10 "CLIENT":** A system managed by the Department of Children and Family Services used to determine whether an individual is known to a public assistance program administered by the Department of Children and Family Services or the Department of Health and Hospitals.

- 1.1.11 "Commercial Off The Shelf (COTS)":** An item that is commercially available, leased, licensed, or sold to the general public and which requires no special modification or maintenance over its life cycle.
- 1.1.12 "Confidential Information":** Various trade secrets and information of each party that either are defined by law as confidential or Contractor or State desired to protect against unrestricted disclosure including without limitation State non-publicly available Data, Protected Health Information as defined in the Contract, nonpublic Specifications, the Software, State security data, any nonpublic information or documentation concerning either party's business or future products or plans that are learned by the other party during the performance of this Contract and information that is designated as confidential by the disclosing party that may be exempt from the disclosure to the public or other unauthorized persons under applicable State or federal statutes. Notwithstanding the foregoing, the State may disclose Contractor Confidential Information, pursuant to a request received by the State, where such information is required to be disclosed pursuant to Louisiana's public records law, La. R.S. 44:1 *et seq.*
- 1.1.13 "Consumer Communications (CC)":** A convergent set of Information Technology solutions that together provide organizations with the ability to communicate with their customers.
- 1.1.14 "Contract":** The Contract consists of these Terms and Conditions and following attachments:
- Attachment I — Statement of Work
 - Attachment II — HIPAA Business Associate Addendum
 - Attachment III — Hardware/Software Environment
 - Attachment IV — Contractor Personnel and Other Resources
 - Attachment V — Payment Schedule
 - Attachment VI — State Furnished Resources
 - Attachment VII — Insurance Requirements for Contractors
 - Attachment VIII — Service Level Agreement
 - Attachment IX — Warranty Services
 - Attachment X — Information Security Requirements
 - Attachment XI — 1095B Solution
- 1.1.15 "Contractor Technology":** Intellectual property owned by or licensed to Contractor or its subcontractors prior to the effective date or developed by Contractors or its subcontractors independent of, this Contract (including modifications, enhancements or improvements to such intellectual property, including those developed hereunder), including Contractor's and its subcontractors' proprietary methodologies, project management and other tools, deliverable examples, procedures, processes, techniques, data models, templates, general purpose consulting and software tools, utilities, routines and the Proprietary Software.
- 1.1.16 "Core Business Hours":** Monday-Friday, 8:00 AM – 4:30 PM
- 1.1.17 "Custom Software":** The modifications and changes to the System, including without limitation Interfaces, that are designed, developed or produced by Contractor or its subcontractors as a result of the Services under this Contract, including during Warranty Services and System Enhancement and Support.
- 1.1.18 "Data":** The State's records, files, forms, data and other documents, including, but not limited to converted data.
- 1.1.19 "Data Warehousing (DWH)":** A system used for reporting and data analysis that integrates data from one or more disparate sources into a central repository of data.
- 1.1.20 "Days":** Calendar days, unless otherwise indicated.
- 1.1.21 "Defect" and "Deficiency" or "Logged Defects":** A failure of the System to conform to the Specifications of the Detailed Design Specification Document (DDSD) as further described in the Contract, or other documents as mutually agreed in writing between the parties
- 1.1.22 "Deliverable":** A tangible or intangible object produced as a result of this project for delivery to the State.

- 1.1.23 "Department of Children and Family Services (DCFS)":** The Louisiana state executive branch agency whose vision is to keep children safe, help individuals and families become self-sufficient and provide a safe refuge during disasters.
- 1.1.24 "Department of Health and Hospitals (DHH)":** The Louisiana state executive branch agency whose mission is to protect and promote health and to ensure access to medical, preventive, and rehabilitative services for all citizens of the State of Louisiana. DHH, through its Bureau of Health Services Financing ("BHSF"), administers the Medicaid program in Louisiana.
- 1.1.25 "Documentation":** All operations, technical and User manuals used in conjunction with the System, in whole and in part, including without limitation manuals provided by licensors of the Transfer Software and Third Party Software.
- 1.1.26 "Electronic Case Record (ECR)":** The ECR is a custom system developed and maintained by DHH contract staff which enhances the eligibility determination process by having a single consolidated electronic case record for applicant/enrollees and by providing immediate desktop access to the documentation for Medicaid Eligibility staff and other sections of the Bureau of Health Services Financing.
- 1.1.27 "Eligibility Systems Section":** Section within the Department of Health and Hospitals, Bureau of Health Services Financing responsible for assuring the day to day operation of the Medicaid Eligibility Data System and other systems used by Medicaid eligibility staff to perform their tasks. This includes the Electronic Case Record (ECR), On-Line Application (OLA), Notices System (NIAS) and other ancillary applications used in the determination of eligibility.
- 1.1.28 "Engagement Leader":** The Contractor account manager, as described in this Contract.
- 1.1.29 "Enrollee":** anyone for whom Medicaid eligibility has been established and added to Medicaid's eligibility files.
- 1.1.30 "Enterprise Architecture (EA)":** Enterprise Architecture is the organizing logic for business processes and IT infrastructure reflecting the integration and standardization requirements of the company's operating model. The operating model is the desired state of business process integration and business process standardization for delivering goods and services to customers.
- 1.1.31 "Equipment":** The computer hardware on which the Software shall operate following its delivery, all operating system software for use with the Equipment, and telecommunications facilities and services as described herein.
- 1.1.32 "Extract, Transform, and Load (ETL)":** A process by which data is extracted from one source, prepared, and entered into a target database.
- 1.1.33 "Family Independence Temporary Assistance Program (FITAP)":** A program administered by the Louisiana Department of Children and Family Services that provides temporary assistance for needy pregnant women and families with minor children under Title IV-A of the Social Security Act.
- 1.1.34 "Federal Poverty Level (FPL)":** The defined income standard for eligibility for Medicaid programs.
- 1.1.35 "Federally Facilitated Marketplace (FFM)":** A new transparent and competitive insurance marketplace maintained by the Federal Government where individuals can buy affordable and qualified health benefit plans. In order to "shop" in the marketplace, an individual must submit an application. If an individual will be considered for MAGI-based Medicaid and for a federal subsidy to help them pay for the cost of qualified health benefit plan along with a cost sharing reduction. The FFM was previously known as the Insurance Exchange and the Federally Facilitated Exchange (FFE).
- 1.1.36 "Greater New Orleans Community Health Connection (GNOCHC)":** Demonstration waiver program which provides primary care services to eligible individuals in the Greater New Orleans area.
- 1.1.37 "Health Insurance Portability and Accountability Act (HIPAA)":** As defined in Attachment II.
- 1.1.38 "Identity & Access Management (IAM)":** The management of individual principals, their authentication, authorization, and privileges within or across system and enterprise boundaries with the goal of increasing security and productivity while decreasing cost and downtime.
- 1.1.39 "Implementation":** The process for making the System, in whole and in part, fully Operational and in Productive Use by State for processing the data in State's normal business operations. Implementation shall be considered complete when Contractor has completed the implementation services according to the Implementation Plan. Implementation for this project will occur for each of the project software release phases of the project.
- 1.1.40 "Implementation Plan":** A plan prepared by Contractor as a Deliverable that details the transition from design and development of the System to full operation of the System in accordance with specifications.

- 1.1.41 **"Information Technology (IT)":** Electronic devices controlling the flow of information using digital representation and manipulation techniques.
- 1.1.42 **"Joint Legislative Committee on the Budget (JLCB)":** Committee composed of the members of the House Committee on Appropriations, the Senate Finance Committee, and the Chairmen of the House Committee on Ways and Means and the Senate Revenue and Fiscal Affairs Committee.
- 1.1.43 **"Louisiana Children's Health Insurance Program (LaCHIP)":** Louisiana's existing health insurance program for all eligible children in the state.
- 1.1.44 **"Louisiana Health Insurance Premium Payment (LaHIPP)":** Medicaid program which may pay some or the entire monthly health insurance premium for a policyholder and his/her family.
- 1.1.45 **"Low Income Subsidy (LIS)":** Interface used by the Social Security Administration to transmit applicant information to a DHH-accessible database for determination of eligibility in the Medicare Savings Program.
- 1.1.46 **"Master Data Management (MDM)":** A comprehensive method of enabling an enterprise to link all of its critical data to one file, called a master file, that provides a common point of reference.
- 1.1.47 **"Maximum Amount":** The maximum amount payable by State to Contractor under this Contract as set forth in Section 5.
- 1.1.48 **"Medicaid":** A United States public health program that provides payment for health care services provided to eligible elderly, disabled and low-income persons. Medicaid is funded by both federal and state governments.
- 1.1.49 **"Medicaid Eligibility Data System (MEDS)":** The ADABAS Data System responsible for capturing, maintaining, and transmitting Medicaid eligibility. The MEDS system is vital to DHH to ensure established Medicaid eligibility is available for customers to receive services in a timely manner. The MEDS system is responsible for transmitting the Medicaid eligibility data to the Department's Fiscal Intermediary, on a daily basis. This helps ensure that providers of Medicaid services can bill and receive payment for services performed.
- 1.1.50 **"Medicaid Information Technology Architecture (MITA)":** A progressive standard for state Medicaid IT architecture as defined by CMS. It presents a long-term strategy for modernizing state Medicaid computer systems and also interfacing data between state and federal agencies, recipients, and providers.
- 1.1.51 **"Medicaid Management Information System (MMIS)":** The department's fiscal intermediary responsible for Medicaid claims payment.
- 1.1.52 **"Modified Adjusted Gross Income (MAGI)":** An income and household determination methodology resembling tax rules used by the IRS.
- 1.1.53 **"Natural/Construct CASE tool":** Natural Construct is a set of tools for application developers. Created for Software AG's Natural/predict environment, it helps application developers achieve higher productivity goals than are obtainable using Natural and Predict alone.
- 1.1.54 **"Non-MAGI":** Medicaid categories exempt from applying the MAGI methodology.
- 1.1.55 **"Notices in Application Suite (NIAS)":** The notice system is a custom system developed and maintained by DHH contract staff. It is used by the Department of Health and Hospitals, BHSF, and is located within Application Suite that generates notices.
- 1.1.56 **"Office of Technology Services (OTS)":** The Louisiana state office which is the centralized provider of IT support services for executive cabinet agencies of the State of Louisiana and designated it as the sole authority for information technology procurement.
- 1.1.57 **"Online Application System (OLA)":** Medicaid's Online Application System. OLA collects information from the public either directly or via application centers and has been available via the web to all citizens since 2007.
- 1.1.58 **"Operational":** The condition when the system is fully functional in accordance with its specifications and usable for its purposes in the daily operations of the State, and all of the data has been loaded into the system and is available for productive use by State.
- 1.1.59 **"Performance Standards":** The standards to which the System shall perform are described in Attachment VIII of the Contract.
- 1.1.60 **"Personal Computer (PC)":** A computer built around a microprocessor for use by an individual, as in an office or at home or school.

- 1.1.61 **"Production Environment"**: The Equipment on which the Software will be Operational in production for State.
- 1.1.62 **"Project Management Office (PMO)"**: The group or department within a business, agency or enterprise that defines and maintains the standards and processes related to project management within the organization.
- 1.1.63 **"Protected Health Information (PHI)"**: As defined in Attachment II.
- 1.1.64 **"Provider"**: An individual or group that provides medical services.
- 1.1.65 **"Retainage(s)"**: The payment amounts held back from all billings under Contract by the State regarding Project activities, events and Services as set forth in this Contract.
- 1.1.66 **"Security Assertion Markup Language (SAML)"**: An XML-based open standard data format for exchanging authentication and authorization data between parties, in particular, between an identity provider and a service provider.
- 1.1.67 **"Self-Help Code"**: Any back door, time bomb, or drop-dead device or other routine designed to disable a computer program with the passage of time or under the positive control of a person or party other than the State. Excluded from this prohibition are identified and State-authorized features designed for purposes of maintenance or technical support.
- 1.1.68 **"Service-Oriented Architecture (SOA)"**: A software environment wherein methods are exposed via web services for modular consumption by a variety of different components, both internal and external to the runtime environment.
- 1.1.69 **"Services"**: Any activity or tasks, as set forth in the Contract that are performed by the Contractor to meet the requirements of this Contract.
- 1.1.70 **"Social Security Administration (SSA)"**: Federal agency in charge of regulating and adhering to policies related to Social Security benefits.
- 1.1.71 **"Software Development Life Cycle (SDLC)"**: The full range of activities used to successfully complete and deploy custom software from start to finish.
- 1.1.72 **"Specifications"**: The technical and other written specifications and objectives that define the requirements and acceptance criteria for a Deliverable, to the extent applicable.
- 1.1.73 **"State"**: The Louisiana State Division of Administration, Office of Technology Services, any division, section, office, unit or other entity thereof or any of the officers or other officials lawfully representing State. Unless the context clearly requires otherwise, "State" also includes the Louisiana Department of Health and Hospitals and any division, section, office, unit, or other State entity thereof.
- 1.1.74 **"State Data Exchange (SDX)"**: The State Data Exchange (SDX) provides detailed information about benefits received by Supplemental Security Income (SSI) applicants/recipients. It is used to verify SSI benefits in determining eligibility for various public assistance programs.
- 1.1.75 **"State Income and Eligibility Verification System (SIEVS)"**: A system that compares and verifies income and resource information available from the Internal Revenue Service, Social Security Administration, Louisiana Workforce Commission and Louisiana Support Enforcement Services.
- 1.1.76 **"State Project Director"**: The person designated by State to be responsible for all financial and contractual matters regarding the contract, including but not limited to, the person to whom State signature authority has been delegated in writing. The person designated by State to be responsible for day-to-day management of State resources assigned to the Project and monitoring of the status of Contractor's performance under the contract. The terms include, except as otherwise provided herein, an authorized representative of the Project Director acting within the limits of his/her authority.
- 1.1.77 **"Supplemental Nutrition Assistance Program (SNAP)"**: The Economic Stability and Self Sufficiency program that provides monthly benefits to help low income households buy the food they need for good health.
- 1.1.78 **"Supplemental Security Income (SSI)"**: Income supplement program under Social Security to provide a minimum monthly income to aged, blind and disabled persons.
- 1.1.79 **"System"**: The complete collection of all technologies, requirements, and other components comprising the whole Medicaid Eligibility and Enrollment solution designed and implemented by the Contractor for the State of Louisiana defined by this Contract.
- 1.1.80 **"TALX/The Work Number"**: A service of TALX Corporation, it is an outsourced service utilized by Medicaid staff to obtain online up-to-date employment and income verification for Medicaid enrollees.

- 1.1.81 "Third-Party Software":** Software developed by parties other than State or Contractor and generally distributed for commercial use, and not specifically designed or developed for the State, including without limitation operating system software, tools, utilities, and commercial-off-the-shelf software.
- 1.1.82 "Transfer Software":** Software that is transferred to State from another entity for use by State and that will become the base system modified by Contractor staff to create the System.
- 1.1.83 "Unauthorized Code":** Any virus, Trojan horse, worm or other software routines or equipment components designed to permit unauthorized access to disable, erase, or otherwise harm Software, Equipment, or Data or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.
- 1.1.84 "User Acceptance Testing (UAT)":** Process used to validate System changes prior to implementation.
- 1.1.85 "Users":** Entities who will have authorized use of and access to the System.
- 1.1.86 "Warranty Period(s)":** The period following the acceptance of Release 1 and Release 2 as set forth in Attachment IX, during which Contractor shall provide Warranty Services, subject to the understanding that Contractor will continue to provide Warranty Services with respect to Logged Defects found during such Warranty Period.
- 1.1.87 "Warranty Services":** The Services to be provided to State by Contractor during the Warranty Periods as described in the Contract that are subject to the terms and conditions stated in Section 2.4 of this Contract.
- 1.1.88 "Work Product":** All software, code, data files, documentation, records, reports, worksheets, or any other materials created by Contractor for delivery to State as a result of the Services provided hereunder, including any Contractor Technology contained therein.

2 ADMINISTRATIVE REQUIREMENTS

2.1 CONCISE DESCRIPTION OF SERVICES

The Contractor will implement an automated solution that will support Medicaid eligibility and enrollment processes using technologies that will enable Louisiana Medicaid to be more agile in responding to the changing needs of applicants, enrollees and partners while meeting applicable Federal and State requirements in accordance with the Contract.

2.2 COMPLETE DESCRIPTION OF SERVICES

The Contractor will design, implement, and support a Medicaid Eligibility and Enrollment solution for the State of Louisiana.

In addition, the Contractor shall meet performance expectations outlined in the Contract.

2.3 TERM OF CONTRACT

This contract shall begin on December 1, 2015, and shall end on November 30, 2018. With all proper approvals and concurrence with the Contractor, State may also exercise an option for up to two (2) one-year extensions at the same Maintenance and Operations rates, System Enhancement and Support rates, terms and conditions of the initial contract term. Prior to the extension of the contract beyond the initial (36) month term, approval by the Joint Legislative Committee on the Budget (JLCB) or other approval authorized by law shall be obtained. Such written evidence of JLCB approval shall be submitted, along with the contract amendment, to the Office of State Procurement, Professional Contracts Section to extend contract terms beyond the initial three (3) year term. Total contract term, with extensions, shall not exceed five (5) years.

2.4 WARRANTIES

Contractor represents and warrants that it shall:

- A. Correct the Logged Defects as specified and required in the Contract, Section 5.0, during the Warranty Period.
- B. No Surreptitious Code Warranty. Contractor warrants that Custom Software provided hereunder will be free from any "Self-Help Code."
- C. System Performance. Specific operating performance characteristics of the System developed and/or installed hereunder are warranted by the Contractor as stated in Attachment VIII (Service Level Agreement) of the Contract.

- D. **Power and Authority.** Contractor represents and warrants that it has the full power and authority to grant to State the rights in Contractor Technology described in this Contract without violating any rights of any third party and that there is currently no actual or threatened suit by any such third party based on an alleged violation of such rights by Contractor. Contractor further represents and warrants that the person executing this Contract for Contractor has actual authority to bind Contractor to each and every term, condition and obligation to this Contract, and that all requirements of Contractor have been fulfilled to provide such actual authority.
- E. **Extent of Warranty:** THESE WARRANTIES REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS SET FORTH IN THIS SECTION AND ATTACHMENT IX OF THE CONTRACT, ALL OTHER WARRANTIES ARE EXPRESSLY DISCLAIMED.

2.5 INDEMNITY

- A. Contractor shall, at its expense, defend, indemnify, and hold harmless State and its employees, officers, directors, contractors and agents from and against any third-party claim or action against State which is based on a claim that any Work Product, Contractor Technology, or any part thereof under this Contract infringes a patent existing at the time of delivery, copyright, trademark, or other intellectual property right or misappropriates a trade secret all to the extent enforceable under U.S. law, and Contractor shall pay all losses, liabilities, damages, penalties, costs, fees (including reasonable attorneys' fees) and expenses caused by or arising from such claim, except as set forth in Section 2.5(C) below. State shall promptly give Contractor notice of any such claim and shall reasonably cooperate in the defense of such claims, and Contractor shall be entitled to control the defense or settlement of any such claim with counsel of its choosing.
- B. In case the Work Product, Contractor Technology, or any one or part thereof, are in such action held to constitute such an infringement or misappropriation, or the exercise of State's rights thereto is enjoined or restricted, Contractor shall, at its own expense and option: (i) procure for the State the right to continue using the Work Product or Contractor Technology; (ii) modify the Work Product or Contractor Technology to comply with the applicable Specifications and to not violate any intellectual property rights; (iii) replace it with a non-infringing equivalent, or (iv) retrieve any or all infringing Work Product or Contractor Technology upon receipt of notice from State and refund the cost of Deliverable of each such Work Product or Contractor Technology, as applicable. Notwithstanding anything to the contrary herein, the refunds that are provided under this Section are not included under the amounts of the direct damages limits.
- C. However, Contractor shall not be liable to the extent claims of misappropriation or infringement arise from (1) Contractor's compliance with any designs, Specifications or written instructions of the State, (2) modifications made by any party other than Contractor, (3) the operation or use of the Work Product or Contractor Technology with other items Contractor did not supply, (4) State's failure to use any new or corrected versions of the Work Product or Contractor Technology made available by Contractor.
- D. The foregoing states Contractor's sole and exclusive obligation, and State's sole and exclusive remedy, with respect to any alleged infringement by all or part of the Work Product or Contractor Technology.
- E. Contractor agrees, at its expense, to defend, indemnify, and hold harmless the State and its officers, agents, employees, directors and contractors from and against any and all third party claims, damages, expenses, and liability relating to this Contract (including reasonable attorneys' fees) solely for bodily injury, death or damage to real or tangible personal property to the extent directly and proximately caused by the negligence or intentional misconduct of Contractor, its agents, servants, and employee; except to the extent that claims, demands, suits, or causes of action arise out of the negligence of the State of Louisiana, all State Departments, Agencies, Boards, Commissions, its officers, agents, servants, employees and volunteers. State shall promptly give Contractor notice of any such claim and shall reasonably cooperate in the defense of such claims, and Contractor shall be entitled to control the defense or settlement of any such claim with counsel of its choosing.
- F. **Force Majeure.** The Contractor or State of Louisiana shall be exempted from performance under the Contract for any period that the Contractor or State of Louisiana is prevented from performing any services in whole or in part as a result of an act of God, strike, war, civil disturbance, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, hurricanes or unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, court order, or other event outside its reasonable control provided the Contractor or State has promptly acted to take steps so that the Contractor or State can promptly perform. Subject to this provision, such non-performance shall not be considered cause or grounds for termination for the Contract.

2.6 DAMAGES DISCLAIMERS AND LIMITATIONS

- A. **State's Disclaimer of Damages.** State shall not be liable, regardless of the form of action, whether in contract, tort, negligence, strict liability or by statute or otherwise, for any claim related to or arising under this Contract for consequential, incidental, indirect or special damages, including without limitation lost profits and lost business opportunities.
- B. **State's Limitation of Liability.** In no event shall State's aggregate liability to Contractor under this Contract, regardless of the form of action, whether in contract, tort, negligence, strict liability or by statute or otherwise, for any claim related to or arising under this Contract exceed the Maximum Amount of this Contract.
- C. **Contractor's Disclaimers of Damages.** Except as provided in Section 2.6(E) below, Contractor shall not be liable, regardless of the form of action, whether in contract, tort, negligence, strict liability or by statute or otherwise, for any claim related to or arising under this Contract for consequential, incidental, indirect or special damages, including without limitation lost profits and lost business opportunities.
- D. **Contractor's Limitation of Liability.** Except as provided in Section 2.6(E) below, in no event shall Contractor's aggregate liability to State under this Contract, regardless of the form of action, whether in contract, tort, negligence, strict liability or by statute or otherwise, for all other claims against the Contractor where liability is not otherwise set forth in the Contract as being "without limitation", and regardless of the basis on which the claim is made, exceed the greater of \$1,000,000, or two (2) times the fees paid under the Contract, provided however that in no event shall Contractor's aggregate liability to State under this Contract exceed the Maximum Amount.
- E. **Exceptions to Damages Disclaimers and Limitations.** The disclaimers of certain damages and the damages limitations in Sections 2.6(C) and 2.6(D) above shall not apply to damages, expenses, losses, fees, liabilities, costs, disallowances, sanctions, fines, penalties or other amounts arising from indemnification obligations.

2.7 INSURANCE

Contractor will provide insurance in accordance with the Contract at Contractor's expense. The cost of such insurance shall be included in the total contract amount included in Section 5.0.

2.8 LICENSES AND PERMITS

Contractor shall secure and maintain all licenses and permits and pay inspection fees required to do the work required to perform the Services and provide the Deliverables.

2.9 SECURITY

Contractor's personnel, when located at the State facilities in Louisiana, when located at Contractor's development center, or at other times as applicable when performing Services under this Contract, shall comply with the security regulations set forth in the Contract.

2.10 TAXES

Contractor is responsible for payment of all applicable taxes from the funds to be received under this Contract. Contractor's federal tax identification number is 06-1454513.

2.11 CONFIDENTIALITY

- A. All Confidential Information that is designated confidential by a party (the "disclosing party") and made available to the other party (the "receiving party") in order to carry out this Contract, or that becomes available to the receiving party in carrying out this Contract, shall be protected by the receiving party from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as such party uses with respect to its own Confidential Information, which for State is set forth in Attachment X (Information Security Requirements) but in no event using less than a reasonable degree of care. The receiving party shall not be required to keep confidential any data or information, excluding Protected Health Information, that is or becomes publicly available, is already rightfully in the receiving party's possession, is independently developed by the receiving party outside the scope of this Contract, or is rightfully obtained from third parties. Nothing in this provision shall prevent the receiving party from disclosing any data or information as may be required by law, regulation, judicial or administrative process, or in connection with litigation pertaining to this Contract.
- B. State hereby consents to Contractor's disclosing State Confidential Information to subcontractors who are providing services in connection with this Contract, provided the subcontractors comply with Attachment X (Information Security Requirements). Contractor shall obtain from any authorized third-party recipient of State Confidential Information a written acknowledgment that such third party will be bound by

confidentiality obligations that are substantially similar to the terms as specified in this Section 2.11 with respect to the Confidential Information.

- C. Notwithstanding the above, Contractor acknowledges that this Contract shall be a public record as defined under Louisiana law. Any specific information that is claimed by Contractor to be Confidential Information must be clearly identified as such by Contractor. To the extent consistent under Louisiana law, State will maintain the confidentiality of all such information marked Confidential Information. If a request is made to view Contractor's Confidential Information, State will not disclose such information to the requester and will notify Contractor of the request and provide Contractor at least ten (10) business days' notice so that Contractor can take steps to prevent such information from being released to the requester (e.g., obtain a court order enjoining that disclosure).
- D. *Return/Destruction.* Subject to record retention laws and to State's rights under Section 12 below, each party shall promptly return to the disclosing party, or destroy as may be required by law, at the written request of the disclosing party on termination or expiration, all of the disclosing party's Confidential Information, including copies thereof; provided, however, that Contractor may, to the extent permitted by law, retain a limited number of copies of the State's Confidential Information as part of its work papers supporting the Services, provided that such copies remain subject to its confidentiality obligations hereunder.
- E. *Injunctive Relief.* The receiving party shall promptly report to the disclosing party any and all unauthorized disclosures or uses of the disclosing party's Confidential Information of which it or its personnel is aware or has knowledge. The receiving party acknowledges that any publication or disclosure of the disclosing party's Confidential Information to others in breach hereof may cause immediate and irreparable harm to the disclosing party. If the receiving party should publish or disclose such Confidential Information to others without authorization, the disclosing party shall immediately be entitled to seek injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period.
- F. *Nondisclosure of Other State Information.* The use or disclosure by the receiving party of any Confidential Information not necessary for, or directly connected with, the performance of the receiving party's responsibility with respect to Services is prohibited, except upon the express written consent of the disclosing party.
- G. *Priority of HIPAA Business Associate Addendum Provisions.* When the provisions of Attachment II (HIPAA Business Associate Addendum) are applicable, they shall prevail and be given effect over any provisions of this Section 2.11 which conflicts or are inconsistent with the provisions of Attachment II.
- H. *Survival.* The provisions of this Section 2.11 shall remain in effect following the termination or expiration of this Contract.

3 TECHNICAL REQUIREMENTS

3.1 STATEMENT OF WORK

Contractor will perform services in accordance with the terms of this Contract.

3.2 CONFIGURATION REQUIREMENTS

The software system being installed shall be designed and configured by the Contractor to operate within the State's equipment and software as specified in the Contract.

3.3 PROJECT MANAGEMENT

A joint Project Management Office (PMO) will be established for this project with participating representatives from OTS, DHH BHSF, the Contractor's executive staff, and, if available, IV&V support personnel procured through a separate RFP. DHH BHSF staff will provide guidance and oversight regarding high-level deliverables and applicable deadlines as required by CMS.

The Contractor will be required to provide, at a minimum, project management activities described in this section, as well as functions identified in the Contract.

- A. The Contractor will designate a single point of contact for the project who will serve as the front-line, day-to-day manager responsible for administration and supervision of the performance of the tasks specified in the Statement of Work. The Contractor Project Manager's (PM) primary responsibility will be to see that project work is done according to the agreed upon schedule, procedures, and quality standards and that Deliverables are submitted to and accepted by the State according to the timelines set forth in the approved project work plan. Contractor PM will collaborate with the joint PMO to help keep the overall project effort on course and address risks or issues as they arise.

- B. Contractor will develop, maintain, and adhere to consistent processes for accomplishing project objectives.
- C. The Contractor PM and State executive staff will participate in periodic executive steering team committee meetings to review and gain agreement on project status and direction. In these meetings, discussion will focus on:
 - a. The deliverables needed to meet the business objectives according to the plan
 - b. The progress of the work, both planned and unplanned
 - c. Active risks and issues
- D. Contractor will have a Project Management Professional (PMP) certified PM participating in the established joint PMO, or demonstrate that the participating PM has industry equivalent experience. The Work Plan for this project will follow the System Development Life Cycle (SDLC) as specified in the Contract.
- E. All change control processes will adhere to the defined process in the Project Management Plan Deliverable that shall include a change management plan. Other adjustments to the scope of this project shall proceed only in accordance with the Contract.
- F. The Contractor PM shall be responsible for incorporating approved scope and schedule changes in accordance with the Contract. Changes that are approved in accordance with the Contract shall be documented and incorporated by the Contractor PM into the Work Plan. Contractor PM shall create and maintain baselines for the duration of the Contract. The project will be re-baselined if critical milestones are altered and the State requests such re-baselining.
- G. The Contractor shall assist BHSF administrators in creating a readiness assessment of the current Medicaid Eligibility Operations Environment. The Contractor shall work with the joint PMO to create a change management plan for adapting current operations to support the new solution, including the necessary hardware adjustments (server capacity, bandwidth, etc.) and communicating new business processes to the eligibility field analysts and other relevant stakeholders.
- H. The Contractor PM shall be responsible for defining a detailed Project Management Plan in accordance with the high-level guidelines provided by DHH BHSF.
- I. The Contractor PM shall be responsible for risk management, identifying both positive and negative risks, in particular those that impact the Project's scope, timeline, budget, personnel quality, or any other activities that affect the completion of Deliverables.
- J. The Contractor shall be responsible for quality management, including creating and implementing testing plans, quality assurance (QA) standards, QA metrics, and ongoing continuous quality improvement efforts.
- K. The Contractor PM and other relevant support staff are required to attend a weekly joint PMO meeting; the calendar for these meetings will be established by the Contractor PM prior to Contract's start date. These weekly meetings shall, at minimum, the following information:
 - a. An ongoing assessment of the Work Plan and its milestones.
 - b. A risk assessment and plan of mitigation.
 - c. A review of QA metrics, measurement, and control.
 - d. Notification of all items that are due to the Contractor, with required due dates, that are under review by the State.
- L. The Contractor shall be responsible for issues management as it relates to unexpected gaps in the development of this project. DHH BHSF will make available SME's as necessary for the Contractor to address and mitigate project issues.
- M. Contractor's project Work Plan will include the Deliverables, tasks and subtasks required to complete the scope of work defined for the Project.
- N. The project work plan structure will feature the release approach – Release 1 and Release 2 – followed by Operations and Maintenance. Contractor understands the importance of supporting the State as defined by CMS during the CMS required Gate Reviews and the preparation activities and Gate Reviews are identified in the work plan. The work plan will also include activities and planning required for the adoption and integration with the Enterprise Architecture.

3.4 QUALITY ASSURANCE REVIEWS

State, or its designee, reserves the right to conduct, at its sole discretion, Quality Assurance Reviews at appropriate checkpoints throughout the project. Contractor will cooperate with the review process by making

relevant staff and material information available as reasonably requested by the reviewers at no additional cost to the State.

3.5 CONTRACTOR RESOURCES

Contractor agrees to provide the following Contract related resources:

- A. **Project Manager.** Contractor shall provide a project manager to provide day-to-day management of project tasks and activities, coordination of Contractor support and administrative activities, and supervision of Contractor employees. The project manager shall possess the technical and functional skills and knowledge to direct all aspects of the project.

Key Personnel. Contractor shall assign staff identified herein who possess the knowledge, skills, and abilities to perform their individually assigned tasks. Individuals to be assigned by the Contractor as key personnel are listed in the Contract. Key personnel will be on-site during critical phases related to their role. The State will work with the Contractor to define the relevant time periods and the specific key personnel who must be onsite during Core Business Hours, (as further defined in Attachment IV). Both core management staff—Account Manager, Project Manager, Business Analyst Lead, Software Development Lead—and specialized staff—Web Design Lead, Database Development Lead, Enterprise Architecture Lead, Security Specialist, Testing Lead, Data Conversion Lead, and Implementation Lead—shall comprise Key Personnel.

- B. **Personnel Changes.** Except for an Excused Absence (as defined below), Contractor's Project Manager and other key personnel assigned to this Contract may not be removed by Contractor from their assigned roles during the period of performance for each such individual as estimated in the Contract and as may be further modified and agreed to by the parties in the Work Plan, without the written consent of the State. Such consent shall not be unreasonably withheld or delayed provided an equally qualified replacement is offered. In the event that any Contractor personnel become unavailable due to resignation or termination of employment or association, illness, death or other factors or circumstances, (each an "Excused Absence"), outside of the Contractor's reasonable control, as the case may be, the Contractor shall be responsible for providing an equally qualified replacement in time to avoid delays to the work plan.
- C. **Other Resources.** Contractor may provide other resources including but not limited to Support Personnel including Software Developers, Database Developers, Business Analyst, Technical Writer, and Data Analyst.

3.6 STATE PROJECT DIRECTOR

State shall appoint a Project Director for this Contract who will provide oversight of the activities conducted hereunder. The Project Director is identified in the Contract. Notwithstanding the Contractor's responsibility for management during the performance of this Contract as specified in the SOW, the assigned State Project Director shall be the principal point of contact on behalf of the State and will be the principal point of contact for Contractor concerning Contractor's performance under this Contract.

3.7 STATE FURNISHED RESOURCES

State will make available to the Contractor for use in fulfillment of this Contract those resources described in the Contract.

3.8 STATE AND FEDERAL STANDARDS AND REQUIREMENTS

As required, Contractor shall comply with applicable State and Federal laws and regulations, as well as State and Federal agency mandates, related to systems development, installation, software distribution, security, and networking to the extent set forth in the applicable Specifications for the applicable Deliverable.

Published OTS Policies and Standards are found at the following link: <http://www.doa.louisiana.gov/ots/>

3.9 ELECTRONICALLY FORMATTED INFORMATION

State shall be provided all documents in electronic format as specified by the State and mutually agreed upon by the parties, as well as hard-copy. Electronic media prepared by the Contractor for use by the State will be compatible with the State's equivalent desktop applications (e.g., spreadsheets, word processing documents). Conversion of files, if necessary, will be Contractor's responsibility. Conversely, as required, Contractor must accept and be able to process electronic documents and files created by the State's current desktop applications.

4 ACCEPTANCE OF DELIVERABLES

Contract deliverables will be submitted, reviewed, and accepted according to the following procedure:

- A. *General.* Except where this Contract provides different criteria, each Deliverable will be accepted if it materially complies with the applicable specifications for such Deliverable set forth in the Contract and/or as subsequently modified in mutually agreed upon design documents for such Deliverable developed within this Project, or in the mutually agreeable final documentation.
- B. *Submittal and Initial Review.* Upon written notification by Contractor that a Deliverable is completed and available for review and acceptance, the State Project Director will use best efforts to review the Deliverable within five (5) business days (or other period as set forth in the approved Work Plan) after the Deliverable is presented to the State Project Director, but in no event later than fifteen (15) business days after the Deliverable is presented to the State Project Director (or other period as set forth in the current approved Work Plan). Within the applicable period, the State Project Director will direct the appropriate review process, coordinate any review outside the Project team, and present results to any user committees and/or Steering Committee for approval, as needed. The initial review process will be comprehensive with a view toward identifying all items that must be modified or added to enable a Deliverable to be approved. A failure to deliver all or any essential part of a Deliverable may be cause for non-acceptance.
- C. *Notification of Acceptance or Rejection or Under Review.* If no notification is delivered to Contractor within the applicable review period (as listed above or in the Work Plan), the Deliverable will be considered approved. If a Deliverable fails to materially conform to the applicable specifications, State will notify Contractor in writing of such disapproval. If disapproved, the State will specify those applicable specifications that were not met that have caused the Deliverable not to be approved ("identified deficiencies"). If State requests additional time to review the item, State will notify Contractor in writing that the item is under review with an estimated reasonable timeframe for completion, which shall not exceed 50% of the applicable review period set forth in paragraph B unless mutually agreed to in writing between the parties.
- D. *Resubmitting Corrected Deliverables.* If the State rejects a Deliverable, Contractor will resubmit the Deliverable with necessary modifications and the State Project Director will review such modifications within five (5) business days (or other period as set forth in the current approved Work Plan). If no notification is delivered to Contractor within those 5 business days (or other period as set forth in the current approved Work Plan), the Deliverable is considered approved.

If State requests additional time to review the item, State will notify Contractor in writing that the item is under review with an estimated reasonable timeframe for completion, which shall not exceed 50% of the applicable review period set forth in this paragraph unless mutually agreed to in writing between the parties. If the Deliverable's modifications fail to materially conform to its applicable specifications, the State will notify Contractor in writing of additional identified deficiencies that result from such modifications and Contractor will review or retest the previously identified deficiencies and resubmit the Deliverable in accordance with the procedures in this section. The parties agree to repeat this process as required until all such identified deficiencies are corrected or the Contract is terminated.

- E. *Payment of Retainage Based on Acceptance.* Final payment of retainage withheld from Deliverables will be contingent on completion according to the work plan and acceptance of Contract Deliverables in accordance with the mutually agreed upon retainage payment schedule as documented in Attachment V (Payment Schedule). Final payment of retainage withheld from Maintenance and Operations will be payable on an annual basis. No interest on Retainages shall accrue to the Contractor.

5 COMPENSATION AND MAXIMUM AMOUNT OF CONTRACT

In consideration of the services required by this Contract, State hereby agrees to pay to Contractor a maximum fee of \$70,096,782 for the three (3) year term.

5.1 PAYMENT FOR SERVICES AND DELIVERABLES

- A. *Firm Fixed Price.* Except as otherwise specifically provided herein, Contractor shall be compensated on a firm fixed price basis with cost of Deliverable payments following acceptance of the applicable Deliverable(s). Cost of Deliverable payments and Charges, less Retainage and subject to the State remedies herein, will be made following receipt of correct invoices which may be issued in accordance with the terms hereof after acceptance by the State of the applicable Deliverable(s).

The Contractor shall submit deliverables in accordance with established timelines and shall submit itemized invoices monthly or as defined in the Contract. The cost of Deliverables are based on the Project obligations set forth in the Contract. Any material change in the Scope of Work or Contract obligations which may

change the maximum value of this Contract shall require an amendment documenting the change. In such event, either party, as appropriate, may be entitled to receive an equitable adjustment in the Schedule for performance and the compensation otherwise payable to Contractor under this Contract as a result thereof.

- B. **Payment.** Payments are predicated upon successful completion and written approval by the State of Deliverable payments following acceptance of the applicable Deliverable(s) in accordance with Paragraph A. The State, via the Office of Technology Services Statewide Chief Information Officer or his designee, in conjunction with DHH, shall pay properly submitted and approved invoices. The State shall make every reasonable effort to make payments within thirty (30) days of the receipt of corrected invoices and under a valid contract. After sixty (60) days after receipt of invoices by State, Contractor shall notify State in writing of payment delinquency. Contractor may initiate suspension proceedings as described in Section 5.5 of this Contract. Ten (10) percent of the cost of Deliverable and Maintenance and Operations cost shall be held as retainage. Retainage withheld on Deliverables shall be paid in accordance with Section 4(E) above. Contractor will comply with the Division of Administration State General Travel Regulations, as set forth in Division of Administration Policy and Procedure Memorandum No. 49.
- C. **Transportation and Insurance Charges.** The costs associated with transportation, delivery and insurance for each Deliverable, if any, shall be paid for by Contractor.
- D. **Contractor Expenses.** Contractor shall be responsible for payment of all expenses related to the contract, including but not limited to salaries, benefits, employment taxes, insurance, travel and per diem for its Staff.
- E. **Invoices.** Contractor shall submit correct invoices to the State Project Director for all Charges, cost of Deliverables and other amounts to be paid by State hereunder. Invoices should be dated, uniquely numbered, and, reference the contract number, associated Deliverables accepted by the State, associated acceptance dates, billable staff-hours incurred per item, and be signed by Contractor's Project Manager or other authorized representative. The State Project Director will review invoices and upon approval will submit to the OTS procurement section for payment issuance. All invoices submitted must meet with the approval of the State Project Director or designee prior to payment. Contractor shall only submit invoices for Services or Deliverables as permitted by Section 5.1 of this Contract. Incorrect or incomplete invoices will be returned by State to Contractor for correction and reissue. The contract number and, if applicable, purchase order number must appear on all invoices, bills of lading, packages, and correspondence relating to this Contract. Invoices must reference this Contract and provide detailed information and in a format as reasonably requested by State, including without limitation:
 - (1) Contractor name, address, telephone number and federal tax identification number;
 - (2) Invoice date, number and Louisiana DOA issued contract number
 - (3) An itemization of each Deliverable;
 - (4) Applicable cost of Deliverables and Charges and Retainages;
 - (5) Date of delivery and/or date of installation and the Acceptance date triggering payment, as applicable;
 - (6) Any other Project costs with a detailed, itemization of such costs, if applicable;
 - (7) Sales or use taxes, if applicable;
 - (8) Credits and liquidated damages, if any;
 - (9) Total Retainage withheld and Gross and Net Total amount due, and
 - (10) Signature by authorized representative.
- F. **Prohibition against Advance Payments.** No compensation or payment of any nature will be made in advance of services actually performed and/or supplies furnished.
- G. **Contractor will not be paid more than the maximum amount of the contract.**
- H. **Overpayments to Contractor.** Contractor shall promptly, but in all cases within thirty (30) calendar days, pay to State the full amount of any erroneous payment or overpayment upon agreement to an erroneous payment or overpayment to which Contractor is not entitled.
- I. **Credits.** Any credits due State under this Contract may be applied against Contractor's invoices with appropriate information attached, upon giving of notice required herein, if any, by State to Contractor.
- J. **No Increases.** Unless otherwise mutually agreed to, Contractor shall not increase the Maximum Amount due from State under this Contract for all Services and Deliverables, cost of Deliverables, or other Charges during the term of this Contract.

5.2 FINANCIAL REMEDIES

- A. **Reductions in Payments Due.** Unless disputed in good faith by Contractor, Amounts due to State by Contractor under this Contract, may be deducted or set off by State from any money payable to Contractor pursuant to this Contract or applicable law.
- B. **Cover.** If, in the reasonable judgment of State, a default by Contractor relating to its failure to provide acceptable Deliverables as set forth in Section 4 above is not so substantial as to require termination of the entire contract, State may exercise its termination rights for Deliverable(s), in whole or in part, as set forth in Section 6.1 below and procure from a third party the terminated Deliverable(s) on the open market and, subject to the provisions of Section 6.1 and Sections 2.6(C) and 2.6(D), Contractor shall be liable for the cost difference between the cost of Deliverable for the terminated Deliverable(s) and the replacement costs of such Deliverable(s) acquired from another vendor expended by State; provided that State shall mitigate any such difference to the maximum extent possible.

5.3 RETAINAGE PAYMENTS

Deliverables. Upon acceptance of Deliverables, the Retainages related to the paid Deliverables will be paid to the Contractor in accordance with the Contract. No interest on Retainages shall accrue to the Contractor.

5.4 LIQUIDATED DAMAGES

In some cases, the actual damage to State as a result of Contractor's failure to meet specific Service Level Agreement or other material obligations as set forth below are difficult or impossible to determine with precise accuracy. Therefore, the parties agree that State may assess liquidated damages as set forth below; provided that State has given Contractor written notice thereof and an opportunity to cure in accordance with the terms as set forth below.

Failure to Meet Performance Standards. Parties agree that the availability of the System to users when accessing is important to the success of the Project. Except to the extent Contractor's failure to meet the Service Level Agreements in Attachment VIII (Service Level Agreements) of the Contract is caused by or results from (i) any act or omission of any entity other than Contractor or its subcontractors; (ii) an event of force majeure; or (iii) other factors beyond the Contractor's reasonable control, if Contractor fails to meet the Service Level Agreements for System Performance set forth in Section 2 of Attachment VIII (Service Level Agreement) of the Contract and such failure is not resolved, in accordance with Section 2.4 of Attachment VIII, within ten (10) days or twenty-four (24) hours for Logged Critical and High Defects after Contractor receives written notice thereof from State and is reasonably determined to be detrimental to the Project by the State Project Director, State may assess to the Contractor liquidated damages in an amount not to exceed \$1,000 per occurrence per day, up to the 5th occurrence in any month. After the 5th occurrence in any month, and up to the 10th occurrence in any month, the Contractor's liquidated damages for that month will not exceed \$2,000 per occurrence per day for such additional occurrences. After the 10th occurrence in any month, the Contractor's liquidated damages for that month will not exceed \$10,000 per occurrence per day for such additional occurrences. The total liquidated damages shall not exceed \$150,000 in any month. Such sums shall be treated as liquidated damages in lieu of actual damages and not as a penalty. The State may deduct such liquidated damages from any sums due the Contractor under this Contract.

Missed Critical Events. Except to the extent Contractor's failure to meet a Critical Event, as defined in Work Plan of this Contract is caused by or results from (i) any act or omission of any entity other than Contractor or its subcontractors; (ii) an event of force majeure; or (iii) other factors beyond the Contractor's reasonable control, any Critical Event that is (a) unable to be Accepted by the State in accordance with the applicable Deliverable to which such Critical Event is tied and such Deliverable is not cured within a reasonable time by Contractor, and (b) delay is reasonably determined to be detrimental to the Project by the State Project Director and Contractor, State may assess to the Contractor liquidated damages in an amount not to exceed \$1,000 per day. The total liquidated damages shall not exceed \$30,000 in any month. Such sums shall be treated as liquidated damages in lieu of actual damages and not as a penalty. The State may deduct such liquidated damages from any sums due the Contractor under this Contract.

The parties acknowledge and agree that Contractor could incur liquidated damages for more than one event if Contractor fails to timely perform its obligations by each date; provided, however, that in no event will the aggregate liquidated damages that may be assessed by State against Contractor under this Contract exceed ten percent (10%) of the Maximum Amount.

The assessment of liquidated damages shall not constitute a waiver or release of any other remedy the State may have under this Contract for Contractor's breach of this Contract, including without limitation, the State's right to terminate this Contract, and the State shall be entitled in its discretion to seek recovery of actual damages caused by Contractor's failure to perform its obligations under this Contract. However, the State will reduce such actual damages by the amounts of liquidated damages received for the same events causing the

actual damages. In addition, such actual damages shall be subject to the limitations set forth in Sections 2.6(C) and 2.6(D).

Amounts due the State as liquidated damages may be deducted by the State from any money payable to Contractor under this Contract, or the State may bill Contractor as a separate item therefore and Contractor shall promptly make payments on such bills. Amounts due to State by Contractor under this Contract, including but not limited to liquidated damages, may be deducted or set off by State from any money payable to Contractor pursuant to this Contract.

5.5 SUSPENSION OF WORK FOR NON-PAYMENT

Prior to the institution of any action under La. R.S. 39:1672.2-1672.4 and 39:1691 and if after ninety (90) days of non-payment of properly submitted and approved invoices and the total amount due and owing the Contractor reaches or exceeds ten (10%) percent of the total value of the Contract, the Contractor may immediately suspend work that is mandated in the Schedule of Services and Deliverables. Contractor shall notify in writing the State Project Director and the Chief Information Officer (CIO) of its intent to suspend work. Within fourteen (14) days of written notice to the CIO, the CIO shall determine whether work has been properly suspended as permitted under this Contract. If the Contractor is not satisfied with the CIO's decision, it may appeal the CIO's decision in writing to the State's Chief Procurement Officer (SCPO). The SCPO shall issue a written decision within fourteen (14) days of the Contractor's appeal. If the Contractor is not satisfied by the decision of the SCPO, it may appeal the SCPO's decision to the Commissioner of the Division of Administration, who shall issue a written decision within fourteen (14) days of the SCPO's decision. Any appeal resulting from the Commissioner's decision will be resolved in accordance with Section 7 – Governing Law and Remedies for Default. Once the Contractor is satisfied with the decision of the State, work shall resume according to a mutually agreed upon revised Schedule of Services and Deliverables.

The procedures contained in this section are limited to this section and shall apply solely in the event of a suspension of work for non-payment. During the pendency of each appeal in this section, the suspension shall remain in place. Any suspension period greater than 6 months shall be deemed a material breach of this Contract by the State.

6 TERMINATION

6.1 TERMINATION FOR CAUSE

State may terminate this Contract for cause based upon the failure of Contractor to comply with the terms and/or conditions of the Contract; provided that the State shall give the Contractor written notice specifying the Contractor's failure. If within thirty (30) days after receipt of such notice, the Contractor shall not have either corrected such failure or, in the case of failure which cannot be corrected in thirty (30) days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then the State may, at its option, place the Contractor in default and the Contract shall terminate on the date specified in such notice.

Contractor may terminate for cause upon the failure of the State to comply with the terms and conditions of this contract; provided that the Contractor shall give the State written notice specifying the State's failure and a 30-day period for the state to cure the defect. The Contractor may choose not to terminate if it determines that the State has made a good faith effort to cure such failure.

6.2 TERMINATION FOR CONVENIENCE

State may terminate the Contract at any time without penalty by giving sixty (60) days written notice to the Contractor of such termination or negotiating with the Contractor an effective date thereof. Contractor shall be entitled to payment for deliverables in progress in accordance with the Contract.

7 GOVERNING LAW AND REMEDIES FOR DEFAULT

This Contract shall be governed by and interpreted in accordance with the laws and regulations of the State of Louisiana, including but not limited to La. R.S. 39:1551-1736; and this Contract.

Any claim or controversy arising out of the contract shall be resolved by the provisions of La. R.S. 39:1672.2-1672.4.

8 AVAILABILITY OF FUNDS

The continuation of this Contract is contingent upon the appropriation of funds by the Louisiana Legislature to fulfill the requirements of the contract. If the Louisiana Legislature fails to appropriate sufficient monies to provide for the continuation of the contract, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient

monies for the continuation of the contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds have not been appropriated. The continuation of this Contract is also contingent upon the availability of federal funding to finance the contract, and if such federal funds become unavailable after the effective date of the contract, or prior to the anticipated contract expiration date, the State may terminate the contract upon thirty (30) days advance written notice to Contractor. Any termination for unavailability of state and/or federal funding as described herein shall be without penalty or expense to the State except for payments which have been earned prior to the termination; provided that the State has provided Contractor with written notice thereof prior to such termination so that Contractor can cease work prior to the effective date of termination.

9 OWNERSHIP OF PRODUCT

Subject to State's having satisfied its payment obligations therefor, all Work Product (except with respect to any Contractor Technology contained therein) shall become the property of State. All Work Product (except with respect to any Contractor Technology contained therein) shall be work made for hire, and subject to the State having satisfied its payment obligations therefor, the Contractor hereby transfers and assigns to the State any intellectual property rights, including but not limited to the copyright, of any Work Product (except with respect to any Contractor Technology contained therein).

No Work Product assigned to State under this Contract can be distributed by Contractor free or for profit without explicit written approval from the State. To the extent that Contractor includes, incorporates, or embeds into any of the deliverables created or developed under this Contract any Contractor Technology, and subject to State's having satisfied its payment obligations therefor, Contractor grants to, or shall procure for, the State a royalty-free, paid up, perpetual, non-exclusive, non-transferable license to use, display, reproduce, and/or distribute, and to make derivative works from, any and all of such Contractor Technology. To the extent any Contractor Technology provided to State hereunder constitutes inventory within the meaning of Section 471 of the Internal Revenue Code, such Contractor Technology is licensed to State by Contractor as agent for Deloitte Consulting Product Services LLC on the terms and conditions contained herein. Upon execution by Contractor and statutory approval of the Contract by the State, subject to the terms and conditions contained herein, Contractor grants to, or shall procure for, the State a royalty-free, non-exclusive, non-transferable license to use, display, reproduce, and/or distribute, and to make derivative works from, any and all of such Contractor Technology.

During the period between delivery of a Work Product by Contractor and the due date of payment therefor, subject to the terms and conditions contained herein, Contractor hereby grants the State a royalty-free, non-exclusive, limited license to use such Work Product and to use any Contractor Technology contained therein in accordance with this Contract.

The State will execute any necessary memoranda of understanding or agreements with other states where the State receives any other states' assets or code.

10 NONASSIGNABILITY

No contractor shall assign any interest in this Contract by assignment, transfer, or novation, without prior written consent of the State. This provision shall not be construed to prohibit the contractor from assigning his bank, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the State. The State may assign this Contract to any State agency as defined in La. R.S. 39:2(2) upon approval of the Commissioner of Administration, and any changes to the project, including, but not limited to, Scope of Services, obligations, fees or assumptions, resulting from such assignment shall be subject to the requirements of the Contract.

11 RIGHT TO AUDIT

Contractor grants to the Office of the Legislative Auditor, Inspector General's Office, the Federal Government, and any other duly authorized agencies of the State where appropriate the right to inspect and review all books and records pertaining to services rendered under this Contract. Contractor shall comply with federal and/or state laws authorizing such an audit.

12 RECORD RETENTION

Contractor agrees to retain all books, records, and other documents relevant to this Contract and the funds expended hereunder for at least three years after final payment, or as required by applicable Federal law, if Federal funds are used to fund this Contract.

13 CONTRACTOR ELIGIBILITY

Contractor, and each tier of Subcontractors, shall certify that it is not on the List of Parties Excluded from Federal Procurement or Non-procurement Programs promulgated in accordance with E.O.s 12549 and 12689, "Debarment and Suspension" and as set forth in 24 CFR Part 24. Contractor has a continuing obligation to disclose any suspensions or debarment by any government entity to the actual knowledge of the Contractor's Key Personnel performing Services hereunder, as well as any debarment by a Louisiana governmental agency, including but not limited to General Services Administration (GSA). Failure to disclose may constitute grounds for suspension and/or termination of the Contract and debarment from future Contracts.

14 AMENDMENTS IN WRITING

Any alteration, variation, modification, or waiver of provisions of this Contract shall be valid only when they have been reduced to writing, duly signed. No amendment shall be valid until it has been executed by all parties and approved by the Director of the Office of State Procurement, Division of Administration.

15 FUND USE

Contractor agrees not to use funds received for services rendered under this Contract to urge any elector to vote for or against any candidate or proposition on an election ballot nor shall such funds be used to lobby for or against any proposition or matter having the effect of law being considered by the Louisiana Legislature or any local governing authority. This provision shall not prevent the normal dissemination of factual information relative to a proposition on any election ballot or a proposition or matter having the effect of law being considered by the Louisiana Legislature or any local governing authority.

16 NON-DISCRIMINATION

Contractor agrees to abide by the requirements of the following as applicable: Title VI of the Civil Rights Act of 1964 and Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, Federal Executive Order 11246 as amended, the Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, the Fair Housing Act of 1968 as amended, and Contractor agrees to abide by the requirements of the Americans with Disabilities Act of 1990.

Contractor agrees not to discriminate in its employment practices, and will render services under this Contract without regard to race, color, religion, sex, national origin, veteran status, political affiliation or disabilities. Any act of discrimination committed by Contractor, or failure to comply with these obligations when applicable shall be grounds for termination of this Contract.

17 GENERAL COMPLIANCE

Contractor will comply with all applicable Federal, state, and local laws and all applicable Office of Management and Budget Circulars (<http://www.whitehouse.gov/omb/circulars/>) to the extent required and applicable to the Services hereunder.

The Contractor will not provide legal advice regarding its services. Provided that Contractor delivers the System as required under the Contract, Contractor will not provide any assurance or certifications of the System regarding the outcome of future audits, regulatory examinations, legal or regulatory compliance (or other regulatory actions) or anything to that effect beyond Contractor's requirements in the Contract, including but not limited to any "must" requirements requested in the RFP as it pertains to compliance. The responsibility for legal and compliance issues with respect to these matters, including but not limited to reviewing deliverables and work product for legal implications, regulatory or legal compliance of any State system, or anything related, will belong to the State.

18 FINANCIAL MANAGEMENT

Contractor shall agree to comply with 48 CFR Part 31 and agree to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred. The Contractor is responsible for having all subcontractors comply with 48 CFR Part 31 and agree to adhere the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

Contractor shall administer its program in conformance with OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments, as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis. The contractor is responsible for having all subcontractors and project sponsors administer their programs in conformance with OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments, as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

19 DRUG-FREE WORKPLACE REQUIREMENT

Contractor and Subcontractors will certify that they have provided a drug-free workplace in compliance with The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) and with the U.S. Department of Commerce's rules at 15 CFR Part 29.

20 PROHIBITED ACTIVITY

Contractors are prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities, inherently religious activities, lobbying, political patronage, and nepotism activities. The Contractor is responsible for ensuring that all subcontractors understand and comply with the prohibitions from using funds provided herein or personnel employed in the administration of the program for political activities, inherently religious activities, lobbying, political patronage, and nepotism activities.

21 ANTI-KICKBACK CLAUSE

Contractor agrees to adhere to the mandate dictated by the Copeland "Anti-Kickback" Act which provides that each Contractor shall be prohibited from inducing, by any means, any person employed in the completion of work, to give up any part of the compensation to which he is otherwise entitled.

22 CLEAN AIR ACT

Contractor agrees to adhere to the provisions which require compliance with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act which prohibits the use under nonexempt Federal contracts, grants or loans of facilities included on the EPA list of Violating Facilities.

23 ENERGY POLICY AND CONSERVATION ACT

Contractor recognizes the mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

24 CLEAN WATER ACT

Contractor agrees to adhere to all applicable standards, orders, or requirements issued under Section 508 of the Clean Water Act which prohibits the use under nonexempt Federal contracts, grants, or loans of facilities included on the EPA List of Violating Facilities.

25 APPLICABLE LAW

This Contract shall be governed by and interpreted in accordance with the laws of the State of Louisiana. Venue of any action brought with regard to this Contract shall be in the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana.

26 CODE OF ETHICS

The contractor acknowledges that Chapter 15 of Title 42 of the Louisiana Revised Statutes (R.S. 42:1101 et. seq., Code of Governmental Ethics) applies to the Contracting Party in the performance of services called for in this Contract. The Contractor agrees to, in accordance with La. R.S. 42:1161(A), promptly notify the state if potential violations of the Code of Governmental Ethics arise at any time during the term of this Contract.

27 SEVERABILITY

If any term or condition of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

28 COVENANTS AGAINST CONTINGENT FEES AND CONFLICT OF INTEREST

Contractor shall warrant that no person or other organization has been employed or retained to solicit or secure this Agreement upon contract or understanding for a commission, percentage, brokerage, or contingent fee. For

breach or violation of this warrant, the Division of Administration shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee, or to seek such other remedies as legally may be available.

To the actual knowledge of the Contractor's Key Personnel performing services hereunder, no member, officer, or employee of Contractor, or agents, consultant, member of the governing body of Contractor or the locality in which the program is situated, or other public official who exercises or has exercised any functions or responsibilities with respect to this Agreement during his or her tenure, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Agreement or in any activity or benefit, which is part of this Agreement. Contractor will make reasonable efforts to verify compliance with this paragraph.

However, upon written request of Contractor, the Division of Administration may agree in writing to grant an exception for a conflict otherwise prohibited by this provision whenever there has been full public disclosure of the conflict of interest, and the Division of Administration determines that undue hardship will result either to Contractor or the person affected by applying the prohibition and that the granting of a waiver is in the public interest. No such request for exception shall be made by Contractor which would, in any way, permit a violation of State or local law or any statutory or regulatory provision.

29 LABOR STANDARDS AND SECTION 3 COMPLIANCE IN EMPLOYMENT AND TRAINING

Contractor shall agree to comply with the requirements of 29 CFR Part 5 and CFR Part 30 and shall be in conformity with Executive Order 11246, entitled "Equal Employment Opportunity; Copeland "Anti-Kickback" Act (29 CFR Part 3), the Davis-Bacon and Related Acts (29 CFR Parts 1, 3 and 5), the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 et seq.), and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Contract. The contractor is responsible for ensuring that all subcontractors comply with the requirements of 29 CFR Part 5 and CFR Part 30 and shall be in conformity with Executive Order 11246 entitled "Equal Employment Opportunity", Copeland "Anti-Kickback" Act, the Davis-Bacon and Related Acts (29 CFR Parts 1, 3 and 5), the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 et seq.), and all other applicable Federal, State and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Contract.

30 SUBCONTRACTORS

The Contractor may, with prior written permission from the State, enter into subcontracts with third parties for the performance of any part of the Contractor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the State and/or the Division of Administration for any breach in the performance of the Contractor's duties. Subject to the other provisions of this Section, State expressly consents to Contractor's use of the Subcontractors designated in its Proposal for the provision of the Services specified in the Proposal, and to Contractor's use of affiliates or related entities in connection with the provision of the Services. Contractor is responsible for ensuring that any Subcontractor's performance of the Services shall be in accordance with the terms of this contract as they relate to the quality of any Services performed by any and all Subcontractors. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to State for any breach in the performance of Contractor's duties. In addition, Contractor's use of any Subcontractor shall not cause the loss of any warranty from Contractor. All subcontracts will be made in writing and copies provided to State upon request. State has the right to refuse reimbursement for obligations incurred with respect to any subcontractor that fails to comply with the terms and conditions of this Contract. On a quarterly basis, Contractor will provide a summary to the State of payments to its Hudson Veteran Subcontractors under this Contract.

31 THIRD-PARTY VENDORS

- A. **Contractor Responsibilities:** Contractor is responsible for working with third-party hardware and software vendors to resolve issues within Contractor's obligations under the Statement of Work, encountered with their products that impact the Services or Deliverables covered in this Contract. Contractor will assist in identifying root cause of issues for which the third-party vendor does not have a timely solution.
- B. **Limits of Responsibilities:** Contractor will have no responsibility for the performance of other third-party contractors or vendors engaged by the State or for delays caused by those vendors. Contractor will have no responsibility for monitoring the work of other third-party contractors or vendors engaged by the State. Third parties will operate as specified by the third party application vendor via separate agreement.
- C. **State Responsibilities:** State will work with third-party vendors to facilitate the timely provisioning of products identified by the Contractor as required for this project and to promote cooperation between and among the Contractor and other third-party vendors or contractors engaged by the State. State shall obtain

all consents necessary from third parties, excluding subcontractors, required for the Contractor to perform its obligations hereunder.

32 SURVIVAL

All Services performed and Deliverables delivered pursuant to the authority of this Contract are subject to all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

33 HEADINGS

Descriptive headings in this Contract are for convenience only and shall not affect the construction or meaning of contractual language.

34 ENTIRE AGREEMENT AND ORDER OF PRECEDENCE

This Contract, as defined in Section 1.1 above, together with the Request for Proposals and addenda issued thereto by the State and the proposal submitted by the Contractor in response to the State's Request for Proposals, constitutes the entire agreement between the parties with respect to the subject matter.

This Contract shall, to the extent possible, be construed to give effect to all provisions contained therein; however, where provisions are in conflict, first priority shall be given to the provisions of the Contract, excluding the Request for Proposals and the Proposal; second priority shall be given to the provisions of the Request for Proposals, addenda, and amendments thereto; and third priority shall be given to the provisions of the Proposal. No Assumptions (as defined in the Proposal) included in the Contractor's Proposal shall have any force, effect, or validity, except those that have been specifically included in the Contract.

THUS DONE AND SIGNED AT Baton Rouge, Louisiana on the day, month and year first written above.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this day of January 25, 2016
2015.

Contractor: Phong K. Huynh

Phong K Huynh Jan 22, 2016
(Contractor Signature) Date

Contractor's Title: Principal, Deloitte Consulting LLP

State of Louisiana, Division of Administration

Jay Dardenne 1-25-16
Jay Dardenne Date
Commissioner